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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Second Application by BellSouth	)	
Corporation, BellSouth Telecommunications, Inc.	)	CC Docket No. 98-121
And BellSouth Long Distance, Inc., for	)	
Provision of In-Region, InterLATA Services	)	
In Louisiana	)	

REPLY COMMENTS OF e.spire COMMUNICATIONS, INC.

e.spire COMMUNICATIONS, INC.

By: Brad E. Mutschelknaus
John J. Heitmann
KELLY DRYE & WARREN LLP
1200 19th Street, N.W.
Fifth Floor
Washington, D.C. 20036

(202) 955-9600

Its Attorneys

Riley M. Murphy
Executive Vice President
and General Counsel
James C. Falvey
Vice President – Regulatory
Affairs
e.spire COMMUNICATIONS, INC.
133 National Business Parkway
Suite 200
Annapolis Junction, MD 20701

(301) 361-4200

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SUMMARY

The initial round of comments and the DOJ Evaluation provide striking and abundant evidence that BellSouth has fallen well short of demonstrating compliance with Section 271. As a result, the Commission must withhold the reward of interLATA entry and reject a BellSouth Section 271 Application for the third time. Once again, BellSouth can blame only itself for its failure to gain interLATA authority. DOJ and every competitor filing comments in this proceeding agree: BellSouth has erected and maintains substantial barriers to local competition – and to its own reentry into the interLATA market.

Among the most substantial of those barriers is BellSouth's failure to provide cost-based pricing for collocation, unbundled network elements and non-recurring charges. The Louisiana Public Service Commission's failure to apply a forward-looking cost-based pricing methodology does not relieve BellSouth of its obligation to demonstrate compliance with the cost-based pricing standard incorporated into the competitive checklist. The Commission can, and must, determine, to its own satisfaction, whether BellSouth has demonstrated compliance with the cost-based pricing standard incorporated into the checklist.

BellSouth's checklist shortcomings do not stop there. BellSouth remains unable or unwilling to provision unbundled local loops or perform coordinated cut-overs in a way that satisfies the competitive checklist. Its collocation practices and policies stymie competitive entry and its ability to provide collocation remains unproven. Despite an abundance of guidance from the Commission, DOJ and state commissions throughout its region, BellSouth's OSS and performance measurements remain critically deficient. BellSouth also refuses to pay *any* reciprocal compensation to e.spire.

Indeed, BellSouth's checklist shortcomings are so substantial that it remains ineligible to proceed under Track A. Residential customers still do not have a facilities-based alternative to BellSouth. Moreover, BellSouth cannot demonstrate that local markets in Louisiana are fully, fairly and irreversibly open to competition. This fact is underscored by BellSouth's attempts to unilaterally modify its interconnection agreements with competitors and by numerous other ways in which it refuses to embrace the procompetitive provisions of the 1996 Act. Until BellSouth corrects its current course, grant of interLATA relief will not be in the public interest.

The requirements of Section 271 cannot be whittled away by attrition or intransigence. *Every* requirement of Section 271 must be met and *every* BellSouth-created barrier to local competition must be fall *before* BellSouth is rewarded with interLATA authority.

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Before the
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In the Matter of Second Application by BellSouth Corporation, BellSouth Telecommunications, Inc. And BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services In Louisiana	))))))	CC Docket No. 98-121

REPLY COMMENTS OF
e.spire COMMUNICATIONS, INC.

e.spire Communications, Inc. and its Louisiana operating subsidiaries (collectively, "e.spire"), by their attorneys, respectfully submit these reply comments in opposition to the Second Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. (collectively, "BellSouth")[1] for authority to provide in-region interLATA services in Louisiana pursuant to Section 271 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"). The initial round of comments and the Evaluation of the Department of Justice ("DOJ")[2] confirm that BellSouth has fallen well short of carrying its burden of demonstrating compliance with Track A, the Act's cost-based pricing requirements, the competitive checklist, and the public interest standard. Thus, as e.spire

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1 *Second Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region InterLATA Services in Louisiana*, CC Docket No. 98-121, BellSouth Brief (filed July 9, 1998) [hereinafter "BellSouth Brief"].

2 *Second Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region InterLATA Services in Louisiana*, CC Docket No. 98-121, Evaluation of the United States Department of Justice (filed Aug. 19, 1998) [hereinafter "DOJ Evaluation"].

set forth in its initial comments, BellSouth's Application remains grossly premature and must be denied.

Introduction

The initial round of comments and the DOJ Evaluation provide striking and abundant evidence that BellSouth has fallen well short of demonstrating compliance with Section 271. As a result, the Commission must withhold the reward of interLATA entry and reject a BellSouth Section 271 Application for the third time. Once again, BellSouth can blame only itself for its failure to gain interLATA authority. DOJ and every competitor filing comments in this proceeding agree: BellSouth has erected and maintains substantial barriers to competition. Unfortunately for BellSouth, the requirements of Section 271 cannot be whittled away by attrition or intransigence. *Every* requirement of Section 271 must be met and *every* BellSouth-created barrier to local competition must fall *before* BellSouth is rewarded with interLATA authority.

Significantly, Section 271 vests the Commission with the authority and responsibility to make an independent and thorough assessment of each and every aspect of a regional Bell operating company's ("RBOC") compliance with Track A, the competitive checklist, and the public interest standard. No single commenter nor DOJ conducted a statutory review as comprehensive as the one the Commission eventually will have to conclude prior to granting an RBOC interLATA authority pursuant to Section 271. With scores of deficiencies – many of them facial – in the instant application, such a comprehensive review may not be necessary nor possible in the short time in which the Commission must render its decision. Mirroring the approach the Commission has taken with respect to past Section 271 applications, DOJ and most

commenters, including e.spire, focused their comments on specific shortcomings that they determined to be most critical at this point in time. None of this is to say, however, that deficiencies merely noted or not even mentioned are irrelevant or even unimportant. Moreover, because competition is at such an early stage of development in Louisiana, additional deficiencies may arise or be uncovered as competitors begin to test BellSouth's provisioning capabilities in general and its ability to provide unbundled network elements ("UNEs") and collocation in particular.

Emphasizing that BellSouth bears the burden of proving its compliance with each and every requirement of Section 271, e.spire focuses these reply comments on the specific BellSouth checklist shortcomings that have had the most significant impact on e.spire's efforts to compete with BellSouth on a facilities/UNE basis in Louisiana. e.spire concludes its replies with two brief sections in which it welcomes DOJ's rejection of BellSouth's untenable argument that Track A can be satisfied without actual facilities-based competition for residential customers and underscores the widely held view that BellSouth's public interest argument similarly is unfounded.

I. The LPSC's Failure to Apply a Forward-Looking Cost-Based Pricing Methodology Does Not Relieve BellSouth of Its Obligation to Demonstrate Compliance With the Cost-Based Pricing Standard Incorporated Into the Competitive Checklist

The record in this docket contains substantial support for e.spire's position that, because the competitive checklist incorporates the cost-based pricing requirements of Section 252(d), the Commission can and must make an independent determination as to whether BellSouth's prices for interconnection, collocation and UNEs are consistent with the statutory standard set forth in

Section 252(d).[3] Like e.spire, a number of commenters – and DOJ – demonstrated that BellSouth's prices have little or no relation to forward-looking costs and, in fact, are nowhere close to being in compliance with the congressionally mandated cost-based standard.[4] BellSouth's only defense is its claim that the Louisiana Public Service Commission ("LPSC") has exclusive authority to adopt rates and that the Eighth Circuit's *Iowa Utilities Board* decision forbids the Commission from even addressing the issue.[5] However, as AT&T joined e.spire in observing, the Eighth Circuit's decision neither affected nor rewrote Sections 271(c)(2)(B)(i) and (ii).[6] Even if the *Iowa Utilities Board* decision were to be affirmed by the Supreme Court, the Commission's obligation to conduct a thorough and independent assessment of BellSouth's compliance with the cost-based pricing principles that are incorporated into the competitive checklist remains unchanged.[7]

Notably, DOJ makes several important observations with regard to BellSouth pricing. DOJ's overarching conclusion that "BellSouth Has Not Demonstrated That Its Current or Future Prices for Unbundled Network Elements Will Permit Entry or Effective Competition by Efficient Firms" is right on the mark and reflects the position taken by e.spire and several other commenters.[8] As DOJ suggested in its discussion of UNE combination, here, too, BellSouth is

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3 *See, e.g.*, AT&T Comments at 63-67.

4 *Id;* MCI Comments at 74-84; *see* DOJ Evaluation at 18-26.

5 BellSouth Brief at 37, 39.

6 *See* AT&T Comments at 65.

7 *Id.*

8 DOJ Evaluation at 18; *see, e.g.*, MCI Comments at 76-84.

not without recourse[9] – it is free to resubmit on its own motion forward-looking cost studies to the LPSC, if it wishes to build a reasonable case for interLATA entry.[10]

e.spire also agrees with DOJ's specific conclusion that "a ratemaking methodology that geographically *averages* rather than *deaverages* . . . costs will produce above-cost prices for unbundled loops in densely populated areas, thus inefficiently imposing costs upon and thereby impeding entry in those areas, and inefficiently subsidizing entry in other areas."[11] Nevertheless, DOJ suggests that "we do not believe that geographic deaveraging must necessarily take place immediately, before section 271 authority can be granted" and suggests that it is enough that there merely be some "indication that it will be accomplished over some transition period."[12] e.spire respectfully disagrees with DOJ on this point and submits that DOJ's position cannot be squared with statutory language that incorporates the cost-based pricing standard of Section 252(d) into the competitive checklist.[13] DOJ itself concluded that BellSouth's failure to submit and the LPSC's failure to adopt geographically deaveraged costs resulted in *"above-cost prices for loops in densely populated areas"*.[14] Simply put, UNE prices that are above-cost do not comply with the statutory standard. No promise to transition to cost-based pricing can cure this

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9 *See* DOJ Evaluation at 16.

10 e.spire would welcome such a development, but recognizes that the LPSC likely will not compel BellSouth to file forward-looking cost studies and will not reconsider its own final pricing decision before that decision is reversed on appeal. Appellants' (including e.spire) initial briefs in the appeal of that decision are due at the Federal District Court for the Middle District of Louisiana on September 14, 1998.

11 DOJ Evaluation at 21; *see also* MCI Comments at 77.

12 DOJ Evaluation at 22.

13 *See* MCI Comments at n.64.

14 DOJ Evaluation at 21.

defect.[15] Because Congress clearly intended that Section 271 compliance must come *before* interLATA relief is granted, e.spire respectfully submits that DOJ's position on this point is either statutorily unfounded or wholly independent of the statutory standard which the Commission is compelled to uphold.[16]

Returning to common ground, e.spire concurs with DOJ's assessment of BellSouth's collocation pricing deficiencies and its conclusion that "BellSouth has again failed to demonstrate that its charges for space construction can be justified on the basis of a procompetitive, forward-looking, cost-based methodology."[17] As DOJ and a number of competitors noted, BellSouth's failure to provide competitors with advance information with regard to its charges for collocation stands a substantial barrier to effective competition.[18] Here, too, e.spire believes that this deficiency must be corrected before Section 271 authority is granted.

DOJ also notes that there are "significant outstanding disputes in Louisiana about BellSouth's non-recurring charges and loop prices."[19] Indeed, a number of commenters agreed with e.spire's position that BellSouth's non-recurring charges and loop prices are not cost-

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15 *See* MCI Comments at n.64.

16 It may well be the case that universal service subsidy reform also is needed, as DOJ suggests. *See id* at 21. However, such a need, met or unmet, does not change the fact that the cost-based pricing standard is incorporated into the checklist. Thus, any need for universal service reform cannot reverse the sequence of compliance followed by interLATA entry prescribed by Congress.

17 *Id.* at 22 (citing the Louisiana ALJ Pricing Recommendation that was dismissed without explanation by the LPSC); *see also* MCI Comments at 82.

18 *See id.* at 23-24; *see, e.g.*, Intermedia Comments at 19.

19 DOJ Evaluation at n.37.

based.[20] Despite its intention not to address either of these issues in its evaluation, DOJ concluded in its discussion of geographic deaveraging that BellSouth's loop rates, in fact, were not cost-based.[21] On the subject of BellSouth's non-recurring charges, many commenters were in accord with e.spire's assessment that they, too, are not cost-based.[22] Further, it is notable that DOJ cited the LPSC consultant's recognition that her pricing decisions on both vertical features *and* non-recurring costs could have benefited from more time as a factor in its challenging the legitimacy of BellSouth's vertical switching prices.[23] DOJ, however, did not apply the same logic to BellSouth's non-recurring charges. Nevertheless, e.spire believes that DOJ's logic applies equally to BellSouth's non-recurring charges – some of which bear no relation whatsoever to cost.

Curiously, DOJ followed its acknowledgment that there were serious disputes with regard to BellSouth's loop prices and non-recurring charges with the statement that "[i]n most respects, however, the LPSC's pricing decisions, and its reasoned explanation of those decisions, are consistent with the Department's focus on pro-competitive pricing principles."[24] In light of the complete lack of evidence that the LPSC implemented the Michigan PSC's forward-looking cost methodology which it professed to adopt, e.spire can only conclude that DOJ means that it has no quarrel with the LPSC's adoption of the Michigan PSC's forward-looking cost methodology. DOJ's evaluation is rife with examples of the LPSC's failure to adopt cost-based rates. DOJ also

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20 *See, e.g.*, MCI Comments at 77-81.

21 *See* DOJ Evaluation at 21 ("a ratemaking methodology that geographically *averages* rather than *deaverages* these costs will produce above-cost prices").

22 *See, e.g.*, AT&T Comments at 64-65.

23 DOJ Evaluation at 25.

24 *Id.* at n.37.

acknowledges the LPSC's failure to explain its complete rejection of its chief ALJ's pricing recommendations or its dismissal of competitors' petitions for reconsideration of its final pricing decision.[25] Moreover, e.spire has searched the LPSC's decisions, and while it found what could be characterized as a "reasoned explanation" of the LPSC's adoption of the Michigan PSC's cost methodology, it has not yet seen a reasoned explanation of the way in which it was applied. In fact, substantial evidence in the record suggests that the LPSC's final prices cannot be called cost-based under the Michigan PSC standard or any other.[26]

Finally, with regard to pricing issues, e.spire also shares DOJ's concern with respect to BellSouth's offering of CSAs in compliance with the Act.[27] Until the LPSC adopts a final decision with regard to the wholesale discount applicable to CSAs, it cannot be determined whether BellSouth will offer CSAs at prices that comply with the Act.[28]

II. BellSouth Has Not Provisioned ULLs or Performed Coordinated Cut-Overs in a Way That Satisfies the Competitive Checklist

Despite BellSouth's relative inexperience in provisioning ULLs and performing coordinated cut-overs regionally, and especially in Louisiana, at least two commenters already were able to raise concerns on this issue similar to those raised by e.spire.[29] As DOJ observed, "there is still virtually no competition in Louisiana through the use of unbundled network elements" and there is still "every reason to believe that there would be such competition if most

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25 *See id.* at 25.

26 *See* AT&T Comments at 63-67; MCI Comments at 74-84.

27 *See* DOJ Evaluation at n.35; *see also* MCI Comments at 76.

28 Similarly, until competitors gain experience with reselling BellSouth CSAs, it cannot be determined whether BellSouth actually will resell them in accordance with the Act.

29 *See* AT&T Comments at 30; KMC Comments at 22-23.

of the impediments" discussed by DOJ in its first BellSouth Louisiana evaluation "were not still in place."[30] Significantly, as e.spire noted in its initial comments, many of the loop provisioning and coordinated cut-over problems it is experiencing in New Orleans are similar or identical to those experienced by e.spire with respect to BellSouth's provisioning in Columbus, Georgia over a year and a half ago. BellSouth's failure to create processes and systems to prevent the recurrence of such problems only demonstrates that it is not yet convinced that its discriminatory provisioning practices and performance will not be considered "good enough". Accordingly, e.spire urges the Commission to provide BellSouth with clear guidance on this issue. For facilities-based competition to prosper, coordinated cut-overs must be performed in five minutes or less. Customers simply will not tolerate longer service outages. Unless such a standard is adopted, efficient competitors will not have a meaningful opportunity to compete with BellSouth.

Also with respect to loop provisioning, e.spire concurs with those commenters expressing concern over BellSouth's failure to provide access to xDSL electronics, DSLAMs, and other loop and multiplexing technologies used in the provisioning of advanced telecommunications services.[31] In its recent Section 706 Order, the Commission affirmed that these items are subject to the interconnection, unbundling and resale provisions of Section 251(c).[32] Therefore, BellSouth cannot satisfy the competitive checklist without demonstrating that it offers

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30 DOJ Evaluation at 3-4.

31 *See, e.g.,* Intermedia Comments at 22-24; 29; MCI Comments at 25-27.

32 *Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket No. 98-147, Memorandum Opinion and Order, and Notice of Proposed Rulemaking, ¶¶ 46, 52; 57, 60 (rel. Aug. 7, 1998).

competitors nondiscriminatory interconnection, unbundling and resale of these "advanced" services and elements.

III. BellSouth's Collocation Practices Are a Substantial Barrier to Facilities-Based Competition

e.spire concurs with DOJ and the numerous competitors who asserted that BellSouth's collocation practices and performance are a significant barrier to competition.[33] e.spire also agrees with those commenters who asserted that BellSouth's insistence on collocation as the only method of access to and for combining UNEs is contrary to law.[34] Specifically, e.spire agrees with Intermedia's view that BellSouth must provide an "extended link" alternative to collocation.[35] As DOJ concluded, BellSouth's requirement of collocation for access to and the combination of UNEs "will inevitably slow the process of competitive entry, raise [unnecessarily] the cost of entry, and impair the quality of services by carriers seeking to combine UNEs."[36]

e.spire also agrees with those commenters who asserted that there is no evidence that BellSouth, in fact, is offering collocation in a timely and nondiscriminatory manner or at cost-

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33 DOJ Evaluation at 9-18; *see, e.g.,* Intermedia Comments at 15-22.

34 *See, e.g.,* Intermedia Comments at 15-22; AT&T Comments at 14-20; *but see* Ameritech Comments at 14.

35 Intermedia Comments at 20-22. BellSouth currently provides extended links (without multiple points of collocation) to e.spire pursuant to a provision in the e.spire/BellSouth interconnection agreement. However, BellSouth has stated that e.spire will not get extended links when its initial interconnection agreement with BellSouth expires next month. Obviously, BellSouth's final position and resulting actions remain to be seen. e.spire, however, submits that the Commission may want to track this issue as it develops.

36 DOJ Evaluation at 12; *see also* CompTel Comments at 19-21.

based rates.[37] Moreover e.spire shares DOJ's concern with respect to BellSouth's ability to meet the current and future collocation needs of competitors.[38]

IV. BellSouth's OSS and Performance Measurements Remain Critically Deficient

Once again, DOJ and most commenters pointed to BellSouth's persistent inability to provide nondiscriminatory access to OSS as one of the most significant reasons why the Commission must reject BellSouth's third attempt at interLATA entry.[39] Significantly, many commenters and DOJ traced similar lines in exposing BellSouth's failure to address OSS and measurement shortcomings cited by the Commission in its two previous BellSouth Section 271 orders.[40] DOJ and most commenters also joined e.spire in asserting that BellSouth still is missing critical OSS functionalities.[41] Until BellSouth provides an integrated interface for preordering and ordering, the standard of nondiscriminatory access simply cannot be met.[42] Moreover, even BellSouth's best effort to camouflage performance disparities revealed that its electronic OSS, when used, simply does not work well.[43] As DOJ noted, "in some categories, BellSouth's performance appears to be getting worse".[44] Perhaps the most telling indication of BellSouth's failure to provide nondiscriminatory access to OSS is BellSouth's own

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37 *See, e.g.*, Intermedia Comments at 15-20; AT&T Comments at 29.

38 *See* DOJ Evaluation at 10-11; *see also* MCI Comments at 16.

39 DOJ Evaluation at 26-40; *see, e.g.*, MCI Comments at 40-60.

40 DOJ Evaluation at n.51; *see, e.g.*, CompTel Comments at 7; MCI Comments at 42.

41 DOJ Evaluation at n.51; *see, e.g.*, MCI Comments at 47-52.

42 *See, e.g.*, Intermedia Comments at 11.

43 *See, e.g.*, CompTel Comments at 8, n.13; MCI Comments at 52-55.

44 DOJ Evaluation at 32; *see also* AT&T Comments at 4.

approximation that only 23 percent of its monthly CLEC orders are processed electronically.[45] Given the added consideration that BellSouth has not demonstrated any capacity to provide electronic OSS for complex orders or UNEs, it simply is not possible for the Commission to find that BellSouth even has come close to meeting its obligation to provide nondiscriminatory access to OSS.

Notably, DOJ and many commenters also pointed to BellSouth's refusal to adopt performance measurements that allow for meaningful comparisons between BellSouth's performance for its own retail operations and its performance for competitors.[46] Again, DOJ and competitors tracked BellSouth's failure to follow guidance offered in previous Commission decisions.[47] Significantly, most commenters echoed e.spire's view that, in addition to there being numerous measures missing, what measures BellSouth did provide were merely interim in nature, insufficiently disaggregated and easily capable of masking discriminatory performance.[48] Moreover, many commenters agreed with e.spire that BellSouth's proposed performance measurements fail to protect against "backsliding", as they lack provisions for auditing and self-enforcement.

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45 *See* e.spire Comments at 33 ("BellSouth stated in the LPSC's performance measurement workshops that only approximately 30,000 out of 130,000 monthly orders are processed electronically." On this point, e.spire notes that DOJ appears to have misread this statement to mean that only 23% of BellSouth's monthly orders "flow through". *See* DOJ Evaluation at n.60. While e.spire submits that BellSouth has not sufficiently explained the data supporting its reported flow through rates and suspects that actual flow through is considerably lower than reported, e.spire did not in its initial comments suggest that BellSouth publicly admitted such a dismal flow through rate in a statement made on its behalf during the LPSC's performance workshops.).

46 DOJ Evaluation at n.51, n.53, 28-29; *see, e.g.,* ALTS Comments at 11-13; CompTel Comments at 10.

47 DOJ Evaluation at n.51; *see, e.g.,* CompTel Comments at 10.

48 *See, e.g.,* ALTS Comments at 11-13.

V. BellSouth Refuses to Pay Reciprocal Compensation

One commenter after another cited BellSouth's refusal to pay CLECs reciprocal compensation for ISP traffic as a checklist failure.[49] However, BellSouth's failure on this checklist item goes well beyond this controversy. As e.spire explained in its initial comments, BellSouth has refused to pay *any* reciprocal compensation to e.spire. Moreover, BellSouth has refused to recognize e.spire's right to use the most favored nation clause in its state commission approved interconnection agreement with BellSouth to opt into reciprocal compensation rates established by BellSouth in its interconnection agreement with another CLEC. Accordingly, BellSouth cannot demonstrate compliance with the checklist's reciprocal compensation requirement until it either agrees to appropriate and symmetrical rates and remits all balances due CLECs, or obtains a final resolution on the ISP reciprocal compensation issue in support of its position.[50]

VI. BellSouth Cannot Meet the Threshold Requirements for Track A Entry

Most significantly, e.spire welcomes DOJ's clarification of its interpretation of the facilities-based competition requirement in Track A and its outright rejection of BellSouth's argument that it can gain Track A entry by combining a facilities-based provider serving business customers and a reseller serving residential customers.[51] Indeed, commenters uniformly echoed e.spire's position that Track A requires the presence of actual competition from a

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49 ALTS Comments at 18; AT&T Comments at 68; Cox Comments at 2; Hyperion Comments at 3; Intermedia Comments at 24; KMC Comments at 24; Sprint Comments at 56.

50 *See* Sprint Comments at 57.

51 DOJ Evaluation at n.13.

facilities-based provider that serves both business and residential customers.[52] As e.spire explained in its initial comments, BellSouth's failure to offer cost-based loop prices and non-recurring charges have made it prohibitively expensive for CLECs to provide facilities-based services to residential customers. Significantly, DOJ concurs and provides substantial analytical support for e.spire's position that BellSouth effectively has engaged in a cost-price squeeze that has forestalled the development of facilities-based residential competition.[53] Moreover, DOJ merely hit the tip of the iceberg when it explained that BellSouth's geographically averaged loop prices produce above-cost prices that inhibit facilities/UNE-based entry into the residential market.[54] BellSouth's imposition of non-cost-based non-recurring charges compound the problem exponentially.

Finally, with regard to Track A, DOJ and nearly every commenter concurred with e.spire's view that PCS has not developed into a substitute for wireline local exchange service.[55] As DOJ concluded, "it is clear even from BellSouth's submission that the vast majority of consumers do not consider PCS to be a close substitute for wireline local exchange service, and that PCS competition alone does not provide the full range of benefits" that should be expected "from competitive local markets."[56]

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52 *See, e.g.*, ALTS Comments at 3-4.

53 *See* DOJ Comments at 21, n.42.

54 *Id.*

55 DOJ Evaluation at n.9; *see, e.g.*, CPI Comments at 16-22; CompTel Comments at 27.

56 DOJ Evaluation at n.9.

VII. BellSouth's Practice of Unilaterally Modifying Its Interconnection Agreements With Competitors Is Among Many Reasons Why Grant of Its Application Is Not in the Public Interest

It is well established that neither the Commission nor DOJ agree with BellSouth's view of the public interest test incorporated by Congress into Section 271.[57] Thus, e.spire maintains its position that until BellSouth fully, fairly and irreversibly opens its local markets to competition, any grant of interLATA relief will not be in the public interest. The record in this proceeding makes plain that BellSouth has made no good faith attempt to comply with all of the provisions of Section 271. Several commenters set forth in great detail how BellSouth discriminates against and obstructs the efforts of competitors.[58] e.spire provided several examples of how BellSouth uses the advantages of incumbency to delay local competition. BellSouth's attempts to unilaterally remove most favored nation and reciprocal compensation provisions from its interconnection agreement with e.spire provide a significant illustration of the extent to which BellSouth still does not take seriously the obligations imposed by the pro-competitive provisions of the 1996 Act. BellSouth's multi-front assault on the five minute loop cut-over provision contained in its interconnection agreement with e.spire provides another vivid illustration of the way in which BellSouth has failed to embrace the pro-competitive principles of the 1996 Act. Until BellSouth rights its course and chooses to accept its statutory obligations to open its network and cooperate with competitors, removal of the Section 271 incentive of interLATA relief will remain contrary to the public interest.

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57 *See* DOJ Evaluation at 41.

58 *See, e.g.*, State Communications Comments at 1-4, Russell Aff.

Conclusion

As the foregoing discussion and the record in this docket demonstrate, BellSouth is ineligible for interLATA relief and its second application to provide in-region interLATA services in Louisiana should be denied. BellSouth has not demonstrated compliance with Track A and has not fully implemented the competitive checklist, including the cost-based pricing provisions contained therein. Moreover, BellSouth has not demonstrated that grant of its application would be in the public interest. Because Louisiana's local exchange market is not fully, fairly and irreversibly open to competition, BellSouth's application must be denied.

Respectfully submitted,

e.spire COMMUNICATIONS, INC.

By: _____
Brad E. Mutschelknaus
John J. Heitmann
KELLY DRYE & WARREN LLP
1200 19th Street, N.W.
Fifth Floor
Washington, D.C. 20036

(202) 955-9600

Its Attorneys

Riley M. Murphy
Executive Vice President
and General Counsel
James C. Falvey
Vice President – Regulatory
Affairs
e.spire COMMUNICATIONS, INC.
133 National Business Parkway
Suite 200
Annapolis Junction, MD 20701

(301) 361-4295

August 28, 1998

CERTIFICATE OF SERVICE

I, John J. Heitmann, hereby certify that copies of the foregoing "Reply Comments of e.spire Communications, Inc." were served this 28th day of August, 1998, by hand delivery, Overnight Courier, or U.S. mail (first-class postage prepaid) on the following:

Charles R. Morgan
William B. Barfield
Jim O. Llewellyn
BellSouth Corporation
1155 Peachtree Street, N.E.
Atlanta, Georgia 30367

David G. Frolio
BellSouth Corporation
1133 21st Street, NW
Washington, DC 20036

Erwin G. Krasnow
Verner, Liipfert, Bernhard, McPherson & Hand
901 15th Street, N.W.
Washington, DC 20005

James G. Harralson
BellSouth Corporation
28 Perimeter Center East
Atlanta, Georgia 30346

Michael K. Kellogg
Austin C. Schlick
William B. Petersen
Kellogg, Huber, Hansen, Todd & Evans, P.L.L.C.
1301 K Street, NW, Suite 1000 West
Washington, DC 20005

Margaret H. Greene
R. Douglas Lackey
Stephen M. Klimacek
BellSouth Corporation
675 W. Peachtree Street, N.E., Suite 4300
Atlanta, Georgia 30375

Commissioner Michael K. Powell*
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, DC 20554

Commissioner William E. Kennard*
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, DC 20554

Commissioner Susan Ness*
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, DC 20554

Commissioner Harold Furchtgott-Roth*
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, DC 20554

Commissioner Gloria Tristani*
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, DC 20554

Ms. Carol E. Mattey*
Chief, Policy and Planning Division
Federal Communications Commission
1919 M Street, N.W., Room 544
Washington, DC 20554

Ms. Kathryn A. Brown*
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, DC 20554

Ms. Melissa Newman*
Deputy Bureau Chief, Policy and Program
Planning Division
Federal Communications Commission
1919 M Street, N.W., Room 544
Washington, DC 20554

Janice Myles*
Policy and Program Planning Division, CCB
Federal Communications Commission
1919 M Street, N.W., Room 554
Washington, DC 20554

ITS, Inc.*
1231 20th Street, N.W.
Washington, DC 20036

Donald J. Russell**
Department of Justice
Telecommunications Task Force
Antitrust Division
1401 H Street, N.W., Suite 8000
Washington, DC 20503

Louisiana Public Service Commission**
One American Place, Suite 1630
P.O. Box 91154
Baton Rouge, Louisiana 70821-9154

*Via Hand Delivery
**Via Overnight Courier

John J. Heitmann